

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 28, 00

U.S. PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Lifetec, Limited

v.

Vesta Brue

Opposition No. 103,538 to application Serial No. 74/708,126,
filed on July 31, 1995

Dana L. Hartje and Sabrina C. Stavish of Sheridan Ross P.C. for
Lifetec, Limited.

Thomas E. Sisson of Miller, Sisson, Chapman & Nash, P.C. for
Vesta Brue.

Before Hohein, Chapman and Wendel, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Vesta Brue, a United States citizen, has filed an
application to register the mark "LIFETECH" for the following
services:

"business management in the field of
diagnosis, assessment, and treatment of
compulsive, obsessive, impulsive, and/or
addictive behaviors" in International Class
35;

"educational services, namely,
conducting classes and seminars for the

medical profession in the field of diagnosis, assessment, and treatment of compulsive, obsessive, impulsive and/or addictive behaviors, and distributing course materials in connection therewith" in International Class 41; and

"medical and scientific research in the field of compulsive, obsessive, impulsive, and/or addictive behaviors" in International Class 42.¹

Lifetec, Limited has opposed registration on the ground that, prior to the filing date of applicant's application, opposer "adopted and [has] continuously used the mark 'LIFETEC LEARNING SYSTEMS' since at least as early as November 1993 in connection with a wide range of products and services"; that, in particular, opposer is the owner of a valid and subsisting registration of such mark for the following goods and services:

"prerecorded audio tapes in the field of personal and professional development" in International Class 9;

"printed matter, namely books, workbooks, review cards, brochures, transcripts of audio tapes, and manuals in the field of personal and professional development" in International Class 16; and

"educational services, namely educational courses, lectures, seminars and programs in the field of personal and professional development; [and] certification and training of instructors in the field of personal and professional development" in International Class 42;²

¹ Ser. No. 74/708,126, filed on July 31, 1995, which alleges a bona fide intention to use such mark in commerce.

² Reg. No. 1,939,119, issued on December 5, 1995, which sets forth dates of first use of January 1994 for the goods and November 1993 for the services. The words "LEARNING SYSTEMS" are disclaimed.

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that opposer's mark is "well known"; and that applicant's "LIFETECH" mark, when used in connection with applicant's services, so resembles opposer's previously used and registered "LIFETEC LEARNING SYSTEMS" mark for its products and services as to be likely to cause confusion.

Applicant, in his answer, has denied the salient allegations of the notice of opposition.

The record consists of the pleadings; the file of the involved application; and, by a notice of reliance filed by opposer as its case-in-chief, a certified copy of its pleaded registration, showing that the registration is subsisting and owned by opposer. Neither party took testimony or introduced any other evidence. Only opposer submitted a brief and neither party requested an oral hearing.

Opposer's priority of use of its "LIFETEC LEARNING SYSTEMS" mark is not in issue since, as noted previously, the certified copy of its pleaded registration demonstrates that the registration is subsisting and owned by opposer. See King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). The only issue to be determined, therefore, is whether applicant's "LIFETECH" mark, when used in connection with applicant's business management, medical profession educational, and medical and scientific research services in the field of diagnosis, assessment, and treatment of compulsive, obsessive, impulsive, and/or addictive behaviors, so resembles opposer's "LIFETEC LEARNING SYSTEMS" mark for prerecorded audio tapes, various items of printed matter, and educational, certification

and training services in the field of personal and professional development as to be likely to cause confusion as to source or sponsorship.

Upon consideration of the pertinent factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, we find that, on this record, opposer has failed to satisfy its burden of demonstrating that confusion as to source or sponsorship is likely to occur. In particular, while we agree with opposer that, when considered in their entirety, the respective marks are "similar in appearance, sound, connotation and commercial impression,"³ there is no proof that, as asserted by opposer in its brief, "the services intended to be offered by Brue under the mark 'LIFETECH' are closely

³ Opposer, besides observing that applicant's "LIFETECH" mark differs from the "LIFETEC" portion of its "LIFETEC LEARNING SYSTEMS" mark only in "the addition of the silent [letter] 'H,'" concedes in its brief that the words "LEARNING SYSTEMS" in its mark "have been disclaimed because they are descriptive/generic words with little or no trademark significance." As pointed out in *In re National Data Corp.*, 753 F.3d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985), while marks must be compared in their entirety, including any disclaimed matter, it nevertheless is the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." For instance, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark" 224 USPQ at 751. Here, the dominant, source-indicative element of opposer's mark, due to the descriptiveness of the disclaimed words "LEARNING SYSTEMS" when used in connection with opposer's goods and services, is the term "LIFETEC," which is not only virtually identical in sound, appearance and connotation to applicant's "LIFETECH" mark, but which engenders in opposer's mark as a whole a commercial impression which is substantially similar to that projected by applicant's mark for his services. If such marks, therefore, were to be used in connection with the same or closely related goods and/or services, confusion as to origin or affiliation would be likely.

related to the goods and services offered by Lifetec under the mark 'LIFETEC LEARNING SYSTEMS' and will likely be offered through the same channels of trade to the same consumers."

Specifically, opposer argues that the parties both "offer educational programs such as classes and seminars"; that they "provide printed materials such as course materials and manuals"; and that both "offer these services and products in the general field of treating psychological issues and problems." Opposer also contends that both parties "provide instructional services to those treating persons with psychological issues and problems," with applicant providing "business management services and classes directed to the medical profession in the field of diagnosis, assessment and treatment of compulsive, obsessive, impulsive and/or addictive behaviors" while opposer "certifies and trains instructors in the field of personal and professional development." According to opposer:

The sole element of difference in the goods/services offered by Brue and Lifetec appears to be the type of issues or problems to which the goods/services are directed. However, upon close examination, the issues or problems addressed by Lifetec are broad enough to include the more specific disorders or problems identified by Brue in Brue's application. In particular, Brue's services are directed to compulsive, obsessive, impulsive, and/or addictive behaviors. Lifetec's services are directed to personal and professional development. Personal and professional development issues can include addictive behaviors, such as alcoholism, drug abuse, etc. For example, an alcoholic is likely to have problems that either cause or are a symptom of alcoholism which are related to the alcoholic's personal and/or

professional development. As a result, it is likely for Lifetec and Brue to be offering their services to the same type of consumer through the same channels of trade.

Opposer's assertions, however, are without evidentiary support and thus are wholly speculative. There is simply no evidence which shows that applicant's business management, medical profession educational, and medical and scientific research services are so closely related in substantive content to opposer's prerecorded audio tapes, transcripts, books, workbooks, review cards, brochures, manuals, educational courses, lectures, seminars, programs, and instructor certification and training services that customers, whether professionals in a particular field or members of the general consuming public, would be likely to attribute such goods and/or services to a common provider. Applicant's services on their face are distinctly different, in that they pertain to the rehabilitative field of diagnosis, assessment, and treatment of compulsive, obsessive, impulsive, and/or addictive behaviors, from opposer's goods and services, which are directed to the fulfillment of personal and professional development. Nothing even remotely suggests that the diagnosis, assessment, and treatment of behavioral afflictions, such as alcoholism, would be commonly viewed or understood as being encompassed by the rubric of personal and professional development, which while broadly speaking would have a goal of self-improvement or betterment, typically would not include something as involved as seeking to

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cure harmful, or otherwise self-limiting, psychologically based behavior.

In addition, there is no evidence which demonstrates that opposer's "LIFETEC LEARNING SYSTEMS" mark is "well known" or famous and, consequently, that such mark would be entitled to a broad ambit of protection. See, e.g., Kenner Parker Toys Inc. v. Rose Art Industries Inc., 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 862, 113 S.Ct. 181 (1992). The opposition, therefore, must fail.

Decision: The opposition is dismissed.

G. D. Hohein

B. A. Chapman

H. R. Wendel
Administrative Trademark Judges,
Trademark Trial and Appeal Board